

Exhibit 1

Excerpts of Rule 30(b)(6) Deposition of S. Miltenberger
January 9, 2024

PORTIONS DESIGNATED CONFIDENTIAL ATTORNEYS' EYES ONLY

Page 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TNT AMUSEMENTS, INC.,)
d/b/a PLAY-MOR COIN-OP,)
Plaintiff,)
vs.) Case No. 4:23-cv-330
TORCH ELECTRONICS,) JAR
LLC., et al,)
Defendants.)

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ATTORNEYS EYES ONLY

ZOOM VIDEOTAPED 30(b)(6) DEPOSITION OF
STEVEN MILTENBERGER on behalf of Torch
Electronics, Defendants, taken on behalf of the
Plaintiff before Peggy E. Corbett, CSR, CCR, RDR,
pursuant to Notice on the 9th day of January,
2024, at the residence of the witness in
St. Louis, Missouri.

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1 Q. Have you and your wife been employees
2 since the founding of Torch?

3 MR. CRAIG: Jonathan, this was
4 completely covered already in his personal
5 deposition and this is not a topic that was
6 noticed.

7 MR. POTTS: Aaron, he had to
8 prepare for the deposition today, didn't he?

9 MR. CRAIG: This is not a topic he
10 had to prepare about. Point me to in your topics
11 where you are talking about the history of Torch
12 and its employees.

13 MR. POTTS: Aaron, we're going to
14 have a very, very long day.

15 MR. CRAIG: You're right. Point me
16 to where it's at in your topics.

17 Q. (BY MR. POTTS) Mr. Miltenberger, who
18 did you consult with to prepare for your
19 deposition today, other than your attorneys?

20 A. My attorneys.

21 Q. Did you consult with your wife Sondra
22 about the topics that are set forth in your
23 deposition?

24 A. No.

25 MR. CRAIG: Object to form.

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1 MR. POTTS: That's the identity --

2 MR. CRAIG: That's the reason why
3 we had the agreement to move his personal
4 deposition earlier, was so that we didn't have to
5 re-do this whole nonsense.

6 Rich Finneran made a decision, probably
7 without you, to strike out this and other topics,
8 okay. So that is not a topic that is on the
9 board for today. All right?

10 Q. (BY MR. POTTS) Uh-huh. Does Torch
11 currently employ any independent contractors?

12 MR. CRAIG: Do not answer the
13 question. Jonathan, move to a topic that is
14 noticed up and not stricken.

15 Q. (BY MR. POTTS) Are you going to follow
16 your attorney's instruction and refuse to answer
17 that question?

18 A. Yes.

19 Q. Did you consult with any of Torch's
20 independent contractors to prepare for today's
21 deposition?

22 A. No.

23 Q. Would it have been possible for you to
24 consult with any of Torch's independent
25 contractors to prepare for today's deposition?

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1 MR. CRAIG: Object to form.

2 A. What do you mean would it be possible?
3 What does that mean?

4 Q. (BY MR. POTTS) Do you have means of
5 communicating with Torch's independent
6 contractors?

7 A. Yes, I'm able to communicate with
8 Torch's independent contractors.

9 Q. If you had questions could you call the
10 independent contractors on the phone and ask
11 them?

12 A. If I had questions, could I call them?

13 Q. Yes.

14 A. Yes, I can call people. I can call
15 independent contractors.

16 Q. If you had questions about preparing for
17 today's deposition, could you send the
18 independent contractors a text to ask them those
19 questions?

20 MR. CRAIG: Object to form.

21 A. Yes, I could send them a text.

22 Q. (BY MR. POTTS) If you had questions to
23 prepare for today's deposition could you send
24 those independent contractors an e-mail?

25 A. Yes.

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1 MR. CRAIG: Object to form, I mean
2 considering this has been like a month long or
3 more process. You can answer to the extent you
4 are able.

5 MR. POTTS: Aaron, I think the
6 speaking objections need to get nipped in the bud
7 really, really quickly today. I won't hesitate
8 to call up Judge Ross' chambers and go through
9 all of this.

10 MR. CRAIG: Okay, keep going.

11 A. I don't remember when we -- when I
12 started.

13 Q. (BY MR. POTTS) Have you been preparing
14 for more or less than a week for today's
15 deposition.

16 MR. CRAIG: Object to form.

17 A. We have been talking about it for more
18 than a week.

19 Q. (BY MR. POTTS) I appreciate that, but
20 that's not quite my question. How long have you
21 actually been preparing for today's deposition?

22 MR. CRAIG: Object to form.

23 A. I don't remember.

24 Q. (BY MR. POTTS) How many times did you
25 meet with your attorneys to prepare for today's

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1 deposition?

2 MR. CRAIG: Object to form.

3 A. I don't remember that.

4 Q. (BY MR. POTTS) When was the last time
5 you met with your attorneys to prepare for
6 today's deposition?

7 A. Yesterday.

8 Q. Before yesterday, when was the previous
9 time you met with your attorneys to testify -- to
10 prepare for today's deposition?

11 MR. CRAIG: Object to form.

12 A. I don't remember.

13 Q. (BY MR. POTTS) Did you meet with your
14 attorneys last week to prepare for today's
15 deposition?

16 MR. CRAIG: Object to form.

17 A. Yeah, I don't remember that.

18 Q. (BY MR. POTTS) Why didn't you speak
19 with your wife to prepare for your deposition
20 today?

21 MR. CRAIG: Object to form.

22 A. I just didn't.

23 Q. (BY MR. POTTS) Did you consider
24 speaking to her to prepare for the topics in
25 today's deposition?

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1 MR. CRAIG: Object to form.

2 A. No.

3 Q. (BY MR. POTTS) Why didn't you speak
4 with any of the independent contractors to
5 prepare for today's deposition?

6 MR. CRAIG: Object to form.

7 A. I don't know. I didn't feel like I
8 needed to.

9 Q. (BY MR. POTTS) Did you speak with Nick
10 Farley to prepare for today's deposition?

11 MR. CRAIG: Object to form.

12 A. No.

13 Q. (BY MR. POTTS) So other than your
14 attorneys, did you speak with anyone to prepare
15 for today's deposition?

16 MR. CRAIG: Object to form.

17 A. No.

18 Q. (BY MR. POTTS) Did you create any
19 documents to prepare for today's deposition?

20 MR. CRAIG: Object to form.

21 A. Not that I can remember.

22 Q. (BY MR. POTTS) Did you prepare yourself
23 to discuss Torch's financial information with
24 respect to certain locations?

25 A. I reviewed with counsel.

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1 A. Ask the question again.

2 Q. (BY MR. POTTS) Okay. For all of these
3 devices, does the prize viewer show the outcome
4 of any play after the next play?

5 MR. CRAIG: Same objection.

6 A. Ask the question again.

7 Q. (BY MR. POTTS) For all of these
8 devices, does the prize viewer show the outcome
9 of any play after the next play?

10 MR. CRAIG: Object to form.

11 A. I don't know.

12 Q. (BY MR. POTTS) For all of these
13 devices, do they all have a sequential list of
14 outcomes?

15 MR. CRAIG: Object to form, calls
16 for expert testimony.

17 A. I don't know.

18 Q. (BY MR. POTTS) For all of these
19 devices, do the games cycle through that
20 sequential list of outcomes?

21 MR. CRAIG: Object to form, calls
22 for expert testimony and opinion.

23 A. I don't know.

24 Q. (BY MR. POTTS) For all of these
25 devices, does the game repeat the same sequential

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1 list after it cycles through?

2 MR. CRAIG: Object to form, calls
3 for expert testimony and opinions.

4 A. I don't know.

5 Q. (BY MR. POTTS) For all of these devices
6 is that list pre-determined before the player
7 begins playing the game?

8 MR. CRAIG: Object to form, calls
9 for expert testimony and opinions.

10 A. I don't know.

11 Q. (BY MR. POTTS) For all of these
12 devices, is that list finite?

13 MR. CRAIG: Object to form, calls
14 for expert testimony and opinions.

15 A. I don't know.

16 Q. (BY MR. POTTS) For all of these
17 devices, does the device randomly select the
18 first outcome on that list?

19 MR. CRAIG: Object to form, calls
20 for expert testimony and opinions.

21 A. I don't know.

22 Q. (BY MR. POTTS) For all of these devices
23 can players or location owners modify, influence
24 or otherwise control the outcome of any turn?

25 MR. CRAIG: Object to form, object,

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1 ambiguous, vague, calls for expert testimony and
2 opinions.

3 A. I don't know.

4 Q. (BY MR. POTTS) As the president of the
5 company can you tell the jury how these games
6 work?

7 MR. CRAIG: Object to form, calls
8 for expert testimony and opinions, vague and
9 ambiguous.

10 A. I don't know.

11 Q. (BY MR. POTTS) Earlier you used the
12 word "suite," right?

13 A. Yes.

14 Q. Are there individual types of game play
15 on each one of these devices?

16 MR. CRAIG: Object to form.

17 A. I don't know what you mean.

18 Q. (BY MR. POTTS) Sure. So let's say that
19 a player walks up to an NCGI okay? Are you
20 following me at least so far?

21 A. Yes.

22 Q. How does someone play the game?

23 MR. CRAIG: Object to form,
24 speculation.

25 A. I don't know how they play the game.

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1 Q. (BY MR. POTTS) As the president of
2 Torch you don't know how patrons use your games?

3 MR. CRAIG: Object to form,
4 speculation, argumentative.

5 A. I don't know how they play the game.

6 Q. (BY MR. POTTS) Are all of these devices
7 manufactured exclusively by Banilla Games?

8 MR. CRAIG: Object to form.

9 A. Yes.

10 Q. (BY MR. POTTS) Has Torch requested that
11 Banilla make changes to any of these devices
12 listed on Interrogatory Exhibit A?

13 MR. CRAIG: Object to form.

14 A. What kind of changes?

15 Q. (BY MR. POTTS) Any kind of changes.

16 MR. CRAIG: Object to form.

17 A. Can you ask again?

18 Q. (BY MR. POTTS) Has Torch requested that
19 Banilla make any types of changes to any of these
20 devices?

21 MR. CRAIG: Object to form.

22 A. Yes.

23 Q. (BY MR. POTTS) Okay. Let's just go
24 through each one of these sequentially. Has
25 Torch requested that Banilla Games make changes

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1 to NCG 1?

2 MR. CRAIG: Object to form.

3 A. I don't remember.

4 Q. (BY MR. POTTS) Has Torch requested that
5 Banilla make changes to NCG 2?

6 MR. CRAIG: Object to form.

7 A. I don't remember.

8 Q. (BY MR. POTTS) Has Torch requested that
9 Banilla make changes to NCG 3?

10 MR. CRAIG: Object to form.

11 A. I don't remember.

12 Q. (BY MR. POTTS) Has Torch requested that
13 Banilla make changes to NCG 4?

14 MR. CRAIG: Object to form.

15 A. I don't remember.

16 Q. (BY MR. POTTS) Has Torch requested that
17 Banilla make changes to NCG 5?

18 MR. CRAIG: Object to form.

19 A. I don't remember.

20 Q. (BY MR. POTTS) Has Torch requested that
21 Banilla make changes to NCG Deluxe 1?

22 MR. CRAIG: Object to form.

23 A. I don't remember.

24 Q. (BY MR. POTTS) Has Torch requested that
25 Banilla make changes to NCG Deluxe 2?

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1 MR. CRAIG: Object to form.

2 A. I don't remember.

3 Q. (BY MR. POTTS) Has Torch requested that
4 Banilla make changes to NCG Deluxe 3?

5 MR. CRAIG: Object to form.

6 A. I don't remember.

7 Q. (BY MR. POTTS) Has Torch requested that
8 Banilla make changes to NCG Deluxe 4?

9 MR. CRAIG: I don't remember.

10 Q. (BY MR. POTTS) Has Torch requested that
11 Banilla make changes to NCG Deluxe 5?

12 MR. CRAIG: Object to form.

13 A. I don't remember.

14 Q. (BY MR. POTTS) Has Torch requested that
15 Banilla make changes to NCG Dual?

16 MR. CRAIG: Object to form.

17 A. I don't remember.

18 Q. (BY MR. POTTS) Has Torch requested that
19 Banilla make changes to NCG Skyriser?

20 MR. CRAIG: Object to form.

21 A. I don't remember.

22 Q. (BY MR. POTTS) Has Torch requested that
23 Banilla make changes to NCG Hot Locks?

24 MR. CRAIG: Object to form.

25 A. I don't remember.

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1 for legal conclusions and expert testimony. You
2 can answer.

3 A. Torch then places equipment in
4 locations. You know, it would be looked at.
5 Again, we place equipment and we share in the
6 revenue.

7 Q. (BY MR. POTTS) Do you place that
8 equipment on the premises of your customers?

9 A. Yes.

10 Q. Do you place that equipment on the
11 premises with the permission of your customers?

12 A. Yes.

13 THE VIDEOGRAPHER: Jonathan, did
14 you want to leave that exhibit up?

15 MR. POTTS: It's fine for right
16 now.

17 THE VIDEOGRAPHER: Okay.

18 Q. (BY MR. POTTS) With respect to any of
19 the overlapping locations, has Torch ever had a
20 written contract with any of those customers.

21 MR. CRAIG: Object.

22 A. I can't remember.

23 Q. (BY MR. POTTS) With respect to the
24 overlapping locations, has Torch ever had an oral
25 agreement with any of those customers?

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1 MR. CRAIG: Object to form, vague
2 and ambiguous, calls for a legal conclusion.

3 A. With respect to the overlapping
4 locations, yes, Torch had a, had an agreement
5 with the location.

6 Q. (BY MR. POTTS) Is it the same agreement
7 for each one of those locations?

8 A. Yes, the agreement is we place the
9 equipment and share in the profit.

10 Q. Are those all of the terms of those
11 agreements?

12 MR. CRAIG: Object to form, calls
13 for a legal conclusion.

14 A. I don't remember.

15 Q. (BY MR. POTTS) As the president of the
16 company you're responsible for the company's
17 contractual commitments, right?

18 MR. CRAIG: Object to form, calls
19 for a legal conclusion.

20 A. I don't know.

21 Q. (BY MR. POTTS) As the president of the
22 company can you tell the jury all the terms of
23 your oral agreements with these overlapping
24 locations?

25 MR. CRAIG: Object to form, calls

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1 for a legal conclusion. You can answer to the
2 extent you can answer.

3 A. I don't remember.

4 Q. (BY MR. POTTS) As the president of the
5 company, other than the terms you've already
6 described, can you tell the jury any other terms
7 of these agreements that you have with the
8 customers at the overlapping locations?

9 MR. CRAIG: Object to form, calls
10 for a legal conclusion.

11 A. I don't remember.

12 Q. (BY MR. POTTS) I think we're due for a
13 break right now. Do you want to take 10?

14 MR. CRAIG: Sounds good.

15 MR. POTTS: All right.

16 THE VIDEOGRAPHER: The time is
17 approximately 10:17 a.m. We are going off the
18 video record.

19 (Recess)

20 THE VIDEOGRAPHER: The time is
21 approximately 10:32 a.m. We are back on the
22 video record. Go ahead.

23 Q. (BY MR. POTTS) All right. We are back
24 and you are still under oath, Mr. Miltenberger.
25 Who was responsible for maintaining the financial

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1 A. Overseeing the company and running the
2 business.

3 Q. Does overseeing the company and running
4 the business include oversight of the financial
5 management of the company?

6 A. Yeah.

7 MR. CRAIG: Object to form.

8 Q. (BY MR. POTTS) Did you speak with your
9 accountants to prepare for today's deposition?

10 A. No.

11 Q. A few other costs I want to delve into.
12 Does Torch own or lease any real property?

13 MR. CRAIG: Object to form.

14 A. Torch leases property.

15 Q. (BY MR. POTTS) What property does Torch
16 lease?

17 A. Torch leases a warehouse, two warehouse
18 facilities in Chesterfield, Missouri, Torch
19 leases a warehouse in Springfield, Missouri and
20 Torch leases a warehouse in Boonville, Missouri,
21 and a warehouse in Kirksville, Missouri.

22 Q. Let's start with the two warehouses in
23 Chesterfield. How long has Torch leased those
24 two warehouses in Chesterfield?

25 A. I don't remember that.

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1 Torch pays for devices, and I am willing to allow
2 him to again testify consistent with that prior
3 testimony here today, okay.

4 So with that caveat and knowing that
5 you're asking him about the shared device
6 locations, you can respond, Mr. Miltenberger.

7 And is it okay if I have a running
8 objection so that I don't have to do this every
9 single time that you ask him about every single
10 device that's on Interrogatory Exhibit A.

11 MR. POTTS: Yes, you can have a
12 running objection.

13 MR. CRAIG: Okay.

14 Q. (BY MR. POTTS) Would you like me to
15 repeat the question, Mr. Miltenberger?

16 A. Please.

17 Q. (BY MR. POTTS) What is the price that
18 Torch pays for an NCG Hot Locks device at the
19 overlapping locations?

20 A. I don't remember.

21 Q. What is the price that Torch pays for an
22 NCG Skyriser device at the overlapping locations?

23 A. I don't remember.

24 Q. What is the price that Torch pays for an
25 NCG Dual device at the overlapping locations?

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1 A. I don't remember.

2 Q. What is the price that Torch pays for an
3 NCG Deluxe 5 at the overlapping locations?

4 A. I don't remember.

5 Q. What is the price that Torch pays for a
6 Deluxe 4 device at the overlapping locations?

7 A. I don't remember.

8 Q. What is the price that Torch pays for an
9 NCG Deluxe 3 at the overlapping locations?

10 A. I don't remember.

11 Q. What is the price that Torch pays for an
12 NCG Deluxe 2 at the overlapping locations?

13 A. I don't remember.

14 Q. What is the price that Torch pays for an
15 NCG Deluxe 1 at the overlapping locations?

16 A. I don't remember.

17 Q. What is the price that Torch pays for an
18 NCG 5 at the overlapping locations?

19 A. I don't remember.

20 Q. What is the price that Torch pays for an
21 NCG 4 at the overlapping locations?

22 A. I don't remember.

23 Q. What is the price that Torch pays for an
24 NCG 3 device at the overlapping locations?

25 A. I don't remember.

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1 Q. What is the price that Torch pays for an
2 NCG 2 at the overlapping locations?

3 A. I don't remember.

4 Q. What is the price that Torch pays for an
5 NCG 1 at the overlapping locations?

6 A. I don't remember.

7 Q. As the president of the company are you
8 unable to tell the jury the price that Torch has
9 paid for any one of these 13 devices at the
10 overlapping locations?

11 MR. CRAIG: Object to form,
12 inconsistent with the prior testimony. He said
13 he doesn't remember.

14 A. I don't remember the prices.

15 Q. (BY MR. POTTS) In the ordinary course
16 of business, how does Torch calculate its profit?

17 MR. CRAIG: Object to form.

18 A. How does it calculate its profits? What
19 do you mean?

20 Q. (BY MR. POTTS) In the ordinary course
21 of business how does Torch calculate its profits
22 in running its business.

23 MR. CRAIG: Object to form, vague
24 and ambiguous, speculative.

25 A. As far as our annual profits that's

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1 exist?

2 MR. CRAIG: Object to form, assumes
3 facts.

4 A. What documents?

5 Q. (BY MR. POTTS) Are there any documents
6 that exist that were created in the ordinary
7 course of Torch's business that described the
8 profitability of the overlapping locations?

9 A. Not that I can remember.

10 MR. CRAIG: Object to form. Yeah,
11 that's fine.

12 Q. (BY MR. POTTS) Have you searched for
13 those documents at all?

14 MR. CRAIG: Object to form, assumes
15 facts, such as he has that obligation and not his
16 attorneys.

17 Q. (BY MR. POTTS) You can answer.

18 A. I don't remember.

19 Q. In 2023 what was Torch's overhead for
20 labor costs?

21 MR. CRAIG: Object to form, beyond
22 the scope of the deposition and goes beyond the
23 agreement of the parties and the Court's
24 stipulated order as to overall profitability
25 which would include costs.

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1 MR. CRAIG: Object to form, asked
2 and answered, I believe. You can respond.

3 A. I mean as far as the profitability for
4 the company, everything gets put together as a
5 total. The location reports, you know, they show
6 our -- the net which is our gross profit.

7 Q. (BY MR. POTTS) With respect to the cost
8 of labor, in particular, let's say you have a big
9 number, a number of X. Let's do a fake number
10 actually. Let's strike that.

11 Let's say your annual costs of labor
12 were \$100,000, okay, across the entire business
13 in the State of Missouri okay are you following
14 me so far?

15 A. Yes.

16 Q. How would Torch allocate that \$100,000
17 of labor costs across the individual locations?

18 MR. CRAIG: Object to form, improper
19 hypothetical, calls for expert testimony.

20 A. I don't know.

21 Q. (BY MR. POTTS) You don't know?

22 A. No.

23 Q. Is your salary a cost that's allocated
24 to individual customer locations to determine
25 profitability?

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1 those profits pro rata based on equity ownership?

2 MR. CRAIG: Object to form, beyond
3 the scope.

4 A. Ask it again.

5 Q. (BY MR. POTTS) Has Torch distributed
6 those profits to the owners pro rata based on
7 equity ownership?

8 MR. CRAIG: Object to form, beyond
9 the scope. To the extent you can answer,
10 limiting your response to the overlapping
11 locations, you can do so.

12 A. I don't know.

13 Q. (BY MR. POTTS) Who decided how to
14 distribute those profits?

15 MR. CRAIG: Object to form, same
16 instructions.

17 A. I don't know.

18 Q. (BY MR. POTTS) You're the majority
19 owner of the company, right?

20 A. Yes.

21 Q. As the majority owner of the company you
22 don't know who made the decision how to
23 distribute the profits?

24 MR. CRAIG: Object to form,
25 argumentative.

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1 A. I don't know how the profits were
2 distributed in relation to the locations that
3 we're talking about.

4 Q. (BY MR. POTTS) And just to be clear,
5 when we're talking about these overlapping
6 locations we're talking about locations where TNT
7 and Torch devices have been located at one time
8 or another, correct?

9 MR. CRAIG: Object to form. I
10 believe that's technically an inaccurate
11 description but you can respond to the extent you
12 can.

13 A. From what I understand minus a couple of
14 locations that were on the list in error.

15 Q. (BY MR. POTTS) And let's go ahead and
16 jump into that topic. I'm going to go ahead and
17 share my screen. And I'm sorry, Peggy, do you
18 know, are we on Exhibit --

19 MR. CRAIG: 6.

20 MR. POTTS: -- 6?

21 THE REPORTER: We had 4. I'm not
22 sure I'm finding 5. Hang on.

23 MR. CRAIG: 5 is the South Bistro.

24 (Exhibit 6 was marked by the
25 reporter for identification.)

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1 A. I am.

2 Q. How long has Torch had a business
3 relationship with Mr. Farley or his company?

4 MR. CRAIG: Object to form.

5 A. I'm not sure. I don't know.

6 Q. (BY MR. POTTS) Over the years either
7 Mr. Farley or his company have examined various
8 Torch devices, correct?

9 A. That's correct.

10 Q. Have you reviewed the results of those
11 examinations?

12 A. I have.

13 Q. Are Mr. Farley's expenses one of Torch's
14 costs over the years?

15 A. They are.

16 Q. Over the years how much has Torch paid
17 Mr. Farley for all of his testing?

18 A. I don't know that.

19 Q. And Torch has designated Mr. Farley as a
20 potential expert in this case, correct?

21 A. From what I understand, yes, from what I
22 understand.

23 Q. And have you reviewed Mr. Farley's
24 report dated November 6th in this case?

25 A. I don't remember that.

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1 do you see any other devices that are listed
2 there on the first page of Mr. Farley's report?

3 A. No, I don't see any.

4 Q. We're going to take that down now.
5 Let's go ahead and pull up what I believe was
6 Exhibit 2. Are you able to see Exhibit 2,
7 Mr. Miltenberger? Actually, that's not Exhibit
8 2. That should actually be Exhibit 4. I
9 apologize. Are you able to see Exhibit 4?

10 MR. CRAIG: So this is Exhibit 4
11 from the deposition today, correct?

12 MR. POTTS: Correct, yeah.

13 MR. CRAIG: Okay.

14 Q. (BY MR. POTTS) Are you able to see
15 that, Mr. Miltenberger?

16 A. Yes, I see it.

17 Q. All right. So we were just looking
18 through Mr. Farley's report and we saw references
19 to NCG 1, NCG 2, NCG 3, NCG 4, NCG 5, and NCG
20 Deluxe 1, right?

21 A. That's correct.

22 Q. Okay. Have you ever retained Mr. Farley
23 to examine NCG 5?

24 MR. CRAIG: Object to form.

25 A. I believe so.

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1 Q. (BY MR. POTTS) Did he prepare a written
2 report with the contents of his findings?

3 A. I can't remember.

4 Q. Have you ever retained Mr. Farley to
5 examine NCG Deluxe 2?

6 MR. CRAIG: Object to form.

7 A. I believe so.

8 Q. (BY MR. POTTS) Did he prepare a written
9 report with his findings?

10 A. I can't remember. All of that went
11 through our attorney.

12 Q. Did you ever retain Mr. Farley to
13 examine NCG Deluxe 3?

14 MR. CRAIG: Object to form.

15 A. Again, that would be our attorney doing
16 that.

17 Q. (BY MR. POTTS) Do you know one way or
18 another whether Mr. Farley was retained by you or
19 your attorneys to examine NCG Deluxe 3?

20 MR. CRAIG: Object to form.

21 A. I can't remember.

22 Q. (BY MR. POTTS) Do you know whether you
23 or your attorneys have ever retained Mr. Farley
24 to examine NCG Deluxe 4?

25 MR. CRAIG: Object to form.

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1 A. I believe we have, but I can't remember.

2 Q. (BY MR. POTTS) Did Mr. Farley prepare a
3 report with respect to his findings regarding NCG
4 Deluxe 4?

5 A. I don't remember.

6 Q. Have you or your attorneys retained
7 Mr. Farley to examine NCG Deluxe 5?

8 A. I don't remember that.

9 Q. Have you or your attorneys retained
10 Mr. Farley to examine NCG Dual?

11 A. I don't remember.

12 Q. Have you or your attorneys retained
13 Mr. Farley to examine NCG Skyriser?

14 MR. CRAIG: Object to form.

15 A. I don't remember.

16 Q. (BY MR. POTTS) Have you or your
17 attorneys retained Mr. Farley to examine NCG Hot
18 Locks?

19 MR. CRAIG: Object to form.

20 A. I don't remember.

21 Q. (BY MR. POTTS) Did you review any of
22 his findings with respect to any of those devices
23 to prepare for your deposition today?

24 MR. CRAIG: Object to form.

25 A. I don't remember that.

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1 Q. (BY MR. POTTS) As the president of this
2 company, can you tell the jury why you're not
3 involved in a gambling business?

4 MR. CRAIG: Object to the form of
5 the question, calls for legal conclusions, legal
6 opinions, expert testimony.

7 A. I can't answer.

8 Q. (BY MR. POTTS) Did any Torch employees
9 ever independently examine the software for the
10 Torch devices?

11 MR. CRAIG: Object to the form of
12 the question.

13 A. Ask that again.

14 Q. (BY MR. POTTS) Has any Torch employees
15 or independent contractors other than Mr. Farley
16 ever examined the software for any Torch devices?

17 A. I don't remember.

18 MR. CRAIG: Object to the form of
19 the question.

20 Q. (BY MR. POTTS) Are there any
21 independent contractors within the company who
22 would be qualified to conduct that type of
23 examination?

24 MR. CRAIG: Object to the form of
25 the question, speculation, improper hypothetical,

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1 calls for expert testimony.

2 A. I don't know.

3 Q. (BY MR. POTTS) Do you know the
4 qualifications of the company's independent
5 contractors?

6 MR. CRAIG: Object to the form of
7 the question.

8 A. I don't know.

9 Q. (BY MR. POTTS) Let's talk about what
10 Torch devices all have in common, okay, and I can
11 pull up the list if you want to, but I'm talking
12 about NCG 1 through 5, NCG Deluxe 1 through 5,
13 NCG Dual, NCG Skyriser, and NCG Hot Locks, okay?
14 Can you hear me okay?

15 A. Yes.

16 Q. Okay. All right, when someone walks up
17 to a Torch device, what's the first step that
18 they do in order to engage with the game?

19 MR. CRAIG: Object to the form of
20 the question, seeks speculative testimony.

21 A. I don't know.

22 Q. Can they put in money?

23 A. Can they put money into the Torch
24 device?

25 Q. Yes.

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1 Q. And then do players play the game?
2 Would you use that type of terminology if you
3 were talking within the company?

4 MR. CRAIG: Object to form,
5 ambiguous, vague.

6 A. It depends how the player is using the
7 game. I don't know.

8 Q. (BY MR. POTTS) Okay. So if someone
9 isn't inserting money, are they playing the game?

10 MR. CRAIG: Object to form,
11 ambiguous, speculative.

12 A. I'm not sure I understand.

13 Q. (BY MR. POTTS) Well, how do I play a
14 game on a Torch device?

15 A. I don't know.

16 MR. CRAIG: Object to form, calls
17 for speculation.

18 Q. (BY MR. POTTS) As the president of
19 this company can you tell the jury how someone
20 plays the games that you make available to the
21 Pub?

22 MR. CRAIG: Object to form,
23 speculation.

24 A. I cannot tell the jury how they play the
25 game.

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1 A. I don't know what you mean, does the
2 screen have a different name?

3 Q. (BY MR. POTTS) Yeah, are there names
4 like Lucky Strike or something like that? What
5 are the names of the different games that you can
6 play?

7 A. Well, there's different names of
8 different games.

9 Q. Okay. What are some examples of games?

10 A. I don't know.

11 Q. You don't know the names of the games on
12 Torch's devices?

13 A. No.

14 Q. What is the range of monetary amounts
15 that a player can insert into the game?

16 MR. CRAIG: Object to form.

17 A. Can you ask the question again? I'm
18 trying to understand.

19 Q. (BY MR. POTTS) Yeah. So if a player
20 wants to play a game, what's the lowest amount of
21 money that someone can insert into the game to
22 play?

23 MR. CRAIG: Object to form.

24 A. \$1 dollar.

25 Q. (BY MR. POTTS) What's the highest

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1 Q. Does the prize viewer allow a player to
2 see the outcome two turns ahead?

3 MR. CRAIG: Object to form,
4 ambiguous as to time.

5 A. If you play the game, you can see the
6 next play ahead.

7 Q. (BY MR. POTTS) But a player has to
8 insert money and play the game once to see the
9 prize two turns ahead, right?

10 MR. CRAIG: Object to form.

11 A. That's correct.

12 Q. (BY MR. POTTS) And inserting money and
13 taking turns on the game is really the only way
14 to make the game progress, right?

15 MR. CRAIG: Object to form.

16 A. That is how the game progresses, yes.

17 Q. (BY MR. POTTS) When a player inserts
18 money for no prize, what's the player's chance of
19 winning on the next turn?

20 MR. CRAIG: Object to form, calls
21 for a legal conclusion, calls for expert
22 testimony on technical issues, ambiguous. You
23 can respond to the extent you know.

24 A. I don't know.

25 Q. Is it possible to know?

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1 MR. CRAIG: Object to form for all
2 the same reasons, calls for expert testimony,
3 speculative, ambiguous as to what specific turn
4 you're talking about.

5 A. I don't know.

6 Q. (BY MR. POTTS) When a player walks up
7 to a Torch device and checks all the prize viewer
8 options on all the play amounts and there's no
9 chance of winning on any setting how many times
10 will that player have to insert money before they
11 win?

12 MR. CRAIG: Object to form,
13 improper hypothetical, speculation, vague and
14 ambiguous as to time. I'm sorry, go ahead.

15 A. I don't know.

16 Q. (BY MR. POTTS) Is it possible to know?

17 A. I don't know.

18 MR. CRAIG: Object to form.

19 Q. (BY MR. POTTS) What's the range of
20 payouts on Torch devices?

21 MR. CRAIG: Object to form.

22 A. I don't know.

23 Q. (BY MR. POTTS) Does it pay out a
24 nickle?

25 MR. CRAIG: Object to form.

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1 A. I don't know.

2 Q. (BY MR. POTTS) As the president of this
3 company, you don't know the amounts that the game
4 pays out?

5 MR. CRAIG: Object to form,
6 ambiguous, vague, argumentative.

7 A. Different games have different prizes.
8 I don't know.

9 Q. (BY MR. POTTS) What's the lowest amount
10 of a payout?

11 MR. CRAIG: Object to form,
12 ambiguous, speculative.

13 A. I don't know.

14 Q. (BY MR. POTTS) What's the highest
15 amount of a payout?

16 MR. CRAIG: Objection, form,
17 speculative, vague, ambiguous.

18 Q. (BY MR. POTTS) What's the lowest payout
19 that you have seen in your own personal
20 experience?

21 MR. CRAIG: Object to form,
22 ambiguous as to time and scope. You can answer
23 to the extent you know.

24 A. I don't remember.

25 Q. (BY MR. POTTS) What's the highest

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1 payout that you have seen in your personal
2 experience?

3 MR. CRAIG: Same objections.

4 A. I don't remember.

5 Q. (BY MR. POTTS) Torch devices rely on a
6 sequential list of pre-determined outcomes,
7 right?

8 MR. CRAIG: Object to form, calls
9 for expert testimony.

10 A. I don't know.

11 Q. (BY MR. POTTS) As the president of this
12 company can you tell the jury how Torch devices
13 work in terms of their list of outcomes?

14 MR. CRAIG: Object to form, calls
15 for expert testimony, ambiguous as stated.

16 A. I don't know.

17 Q. (BY MR. POTTS) How long is that list of
18 pre-determined outcomes?

19 MR. CRAIG: Object to form, calls
20 for expert testimony, ambiguous.

21 A. I don't know.

22 Q. (BY MR. POTTS) For any device that your
23 company owns, can you tell the jury how long the
24 list is of predetermined outcomes?

25 MR. CRAIG: Object to form, calls

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1 for expert testimony, ambiguous, non-specific,
2 vague.

3 A. I don't know.

4 Q. (BY MR. POTTS) For any of the devices
5 that your company owns, how is the list
6 generated?

7 MR. CRAIG: Object to form, calls
8 for expert testimony, ambiguous, vague,
9 speculative as asked.

10 A. I don't know.

11 Q. (BY MR. POTTS) Who selected the length
12 of the list of pre-determined outcomes?

13 MR. CRAIG: Object to form.

14 A. I don't know.

15 Q. (BY MR. POTTS) Is it possible for a
16 player to view the list of pre-determined
17 outcomes?

18 MR. CRAIG: Object to form,
19 speculation.

20 A. I don't know.

21 Q. (BY MR. POTTS) Does a player always
22 have to pay to see the second and third outcome
23 on the list?

24 MR. CRAIG: Object to form,
25 speculation, ambiguous as phrased, and vague, as

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1 well.

2 A. I don't know.

3 Q. (BY MR. POTTS) Does every player use
4 the prize viewer?

5 MR. CRAIG: Objection, speculation.

6 A. I don't know.

7 Q. (BY MR. POTTS) Is Torch able to review
8 the metadata of the devices with respect to use
9 of the prize viewer button?

10 MR. CRAIG: Object to form,
11 speculation, assumes facts.

12 A. I don't know.

13 Q. (BY MR. POTTS) Has Torch ever attempted
14 to review the metadata to see whether it can see
15 how frequently players use the prize viewer
16 button?

17 MR. CRAIG: Object to form, calls
18 for expert testimony, ambiguous, superlative.

19 A. I don't know.

20 Q. (BY MR. POTTS) In your personal
21 experience have you ever observed someone play
22 the game without using the prize viewer?

23 A. I don't remember.

24 Q. Has any employee or independent
25 contractor for Torch ever observed someone play

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1 the game without using the prize viewer?

2 MR. CRAIG: Objection to form,
3 calls for speculation.

4 A. I don't know.

5 Q. (BY MR. POTTS) Have you ever heard
6 stories of any players ever playing the game
7 without using the prize viewer?

8 MR. CRAIG: Object to form, calls
9 for improper opinion testimony, hearsay.

10 A. I don't know.

11 Q. (BY MR. POTTS) Were all of these games
12 designed with the assistance of an attorney?

13 MR. CRAIG: Object to form,
14 speculation, assumes facts, ambiguous and vague
15 as phrased.

16 A. Attorneys were involved.

17 Q. (BY MR. POTTS) Is that true for every
18 game on every Torch device?

19 MR. CRAIG: Object to form, calls
20 for speculation, calls for third-party
21 information, calls for expert testimony. You
22 can answer to the extent you can do so without
23 divulging attorney/client privileged information.

24 A. I can't answer.

25 Q. (BY MR. POTTS) As the president of this

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1 A. No. The screen is blocked by the
2 window.

3 Q. Okay, it might be blocked then, okay.
4 Well, I promise you it is there but I'll keep
5 scrolling through.

6 MR. CRAIG: You can move, Steven,
7 you can move to where the window is, where you
8 see our faces, you can move that around to the
9 extent you need to, to see.

10 A. Oh, I see it.

11 Q. (BY MR. POTTS) Are you able to see that
12 now, Torch 010109?

13 A. Yeah, I see it now.

14 Q. And then this goes all the way through
15 Torch 010112.

16 A. Yes.

17 Q. Okay. Do you recognize this document?

18 A. Yes.

19 Q. All right, what is it?

20 A. It's a flier that we used to give to
21 locations.

22 Q. Did you give this flier to any of the
23 overlapping locations?

24 A. I don't remember that.

25 Q. Who prepared this flier?

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1 A. I believe I did, but I can't remember.

2 I don't remember.

3 Q. This first sentence here you say, "In
4 the No Chance Game chance has absolutely no role
5 in any possible outcome." Do you see that?

6 A. Yes.

7 Q. What did you mean?

8 MR. CRAIG: Object to form.

9 A. That, I copied off of something, but I
10 can't remember where I copied it from.

11 Q. (BY MR. POTTS) Why did you choose to
12 copy that language?

13 MR. CRAIG: Object to form.

14 A. It's just the language that I chose to
15 copy. I can't remember.

16 Q. (BY MR. POTTS) Well, you could have
17 written the language yourself, right?

18 MR. CRAIG: Object to form.

19 A. I could have written language myself,
20 sure.

21 Q. (BY MR. POTTS) Is it true that chance
22 has absolutely no role in any possible outcome?

23 MR. CRAIG: Object to form, calls
24 for a legal conclusion and expert technical
25 testimony, calls for legal opinions.

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1 Q. (BY MR. POTTS) Fair enough, Aaron.

2 Is that statement true that any ticket
3 not redeemed within 24 hours is null and void?

4 MR. CRAIG: Object to form, calls
5 for a legal conclusion.

6 A. I don't know.

7 Q. (BY MR. POTTS) Next it says, "Tickets
8 will print to the nearest dollar." Is that
9 statement true?

10 A. Tickets will print in whole dollar
11 amounts, and the balance stays on the game.

12 Q. So let's say that I have been playing
13 for awhile and I have \$1.25 on the game. What
14 you're saying is I can get a ticket for \$1
15 dollar, but .25 cents will stay on the game?

16 A. That's correct.

17 Q. What if I want to get that .25 cents
18 back? How do I get it?

19 A. It stays on the game.

20 Q. A player has to play that .25 cents
21 that's left on the game in order to potentially
22 get that?

23 MR. CRAIG: Object to form, calls
24 for speculation, inconsistent with prior
25 testimony.

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1 include paying its customers' legal fees?

2 MR. CRAIG: Object to form.

3 A. Torch's costs include legal fees that,
4 yeah, that it paid on behalf of customers.

5 Q. (BY MR. POTTS) So when a problem
6 arises, does a customer reach out to Torch and
7 ask for assistance?

8 MR. CRAIG: Object to form, vague,
9 ambiguous, speculative as to time or instance.

10 A. I don't remember.

11 Q. (BY MR. POTTS) How many customers'
12 legal fees has Torch paid?

13 MR. CRAIG: Object to form, beyond
14 the scope. You can answer to the extent you can
15 answer.

16 A. I don't know.

17 Q. (BY MR. POTTS) Does Torch ever offer to
18 pay its customers' legal fees in advance of them
19 installing the machine at their location?

20 A. I don't remember that.

21 Q. Is Torch aware of any individuals with
22 gambling problems playing Torch devices?

23 MR. CRAIG: Object to form.

24 A. I don't know.

25 Q. (BY MR. POTTS) Is it something that

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1 Q. (BY MR. POTTS) All right. We're almost
2 across the finish line here, Mr. Miltenberger.
3 Do Torch's costs including paying for lobbyists?

4 A. Yes.

5 Q. What lobbying firms has Torch hired from
6 2016 to present?

7 A. I don't remember.

8 Q. You don't remember any of the lobbying
9 firms that Torch has hired at any time during its
10 history?

11 A. I remember some of them. I don't
12 remember all of them.

13 Q. Let's start with the ones you do
14 remember. Can you list them?

15 A. One is Strategic Capitol Consulting.
16 That's one, another one is Palm Consulting maybe.
17 Another is Atlas something. I can't remember.
18 But those are the ones that I remember.

19 Q. Are there potentially more lobbying
20 firms beyond those three?

21 MR. CRAIG: Objection, form.

22 A. I think there was one more, but I can't
23 remember.

24 Q. (BY MR. POTTS) Let's start with
25 Strategic Capitol Consulting. When did you

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1 first, strike that. When did Torch first retain

2 Strategic Capitol Consulting as a lobbyist?

3 A. I don't remember that. It might have

4 been 2018 or 2019. I can't remember.

5 Q. Does Strategic Capitol Consulting still
6 do lobbying business on behalf of Torch today?

7 A. They do, yes.

8 Q. Have they continuously done lobbying
9 business since their first hire in approximately
10 2018 through the present?

11 A. Yes. It's been -- are you saying was
12 there a gap or what are you asking?

13 Q. Yeah, was there ever a gap?

14 A. No.

15 Q. Okay. Do you pay a retainer to
16 Strategic Capitol Consulting?

17 A. We pay a fee but I can't remember what
18 that is.

19 Q. Approximately what's the size of the
20 fee?

21 MR. CRAIG: Object to form, that's
22 beyond of the scope and outside the bounds of our
23 agreement and the Order, the Court's Stipulation
24 and Order. Don't respond.

25 Q. (BY MR. POTTS) Are you going to follow

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1 Q. Is that monthly fee smaller or larger
2 than the monthly fee at Strategic Capitol
3 Consulting?

4 A. That monthly fee is smaller.

5 Q. When did Torch first hire Atlas as a
6 lobbyist?

7 A. I believe it was right around the same
8 time, I can't remember exactly.

9 Q. So 2018?

10 A. I believe so, but I can't remember the
11 exact date.

12 Q. Does Torch pay a retainer to Atlas to
13 lobby on behalf of Torch?

14 A. Torch pays a monthly fee.

15 Q. Is that monthly fee smaller or larger
16 than Strategic Capitol Consulting's monthly fee?

17 A. Smaller.

18 Q. What are the types of lobbying
19 activities that Strategic Capitol Consulting has
20 taken on behalf of Torch?

21 A. I don't know. What do you mean?

22 Q. What do you pay Strategic Capitol
23 Consulting to do?

24 A. To consult.

25 Q. Consult with whom?

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1 A. They consult with us, with Torch.

2 Q. Do you pay them to consult with anyone
3 else?

4 A. I don't know that.

5 Q. Do you pay for them to lobby in
6 Jefferson City on behalf of Torch?

7 A. We do.

8 Q. Do you pay them to have meetings with
9 legislators on behalf of Torch?

10 MR. CRAIG: Object to form.

11 A. I don't know what meetings. I don't
12 know what meetings they have.

13 Q. (BY MR. POTTS) Do you pay them to
14 advocate for legislation that would benefit
15 Torch?

16 MR. CRAIG: Object to form.

17 A. We pay them to support Torch and our
18 business.

19 Q. (BY MR. POTTS) Do you pay them to
20 advocate for legislation that would benefit
21 Torch?

22 MR. CRAIG: Object to form.

23 A. We pay them as a lobbyist, yes.

24 Q. (BY MR. POTTS) What types of
25 legislation have you asked them to lobby for?

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1 MR. CRAIG: Object to form, assumes
2 facts.

3 A. I don't remember.

4 Q. (BY MR. POTTS) Are you paying them a
5 lot of money?

6 MR. CRAIG: Object to form
7 generally improper question. I'll object to
8 form.

9 A. Yeah, I don't know. I don't remember.

10 Q. Well, you don't know what they are
11 actually doing in Jefferson City on behalf of
12 Torch?

13 MR. CRAIG: Object to form,
14 argumentative.

15 A. Yeah, yes, I don't know what they are
16 doing.

17 Q. Do you know whether they are meeting
18 with any officers within the State of Missouri on
19 behalf of Torch?

20 MR. CRAIG: Object to form.

21 A. I don't know that.

22 Q. (BY MR. POTTS) Have you asked them to
23 do that?

24 A. I don't remember.

25 Q. Why did you hire Strategic Capitol

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1 Consulting?

2 A. So help consult us.

3 Q. Why did you select them over other
4 lobbying firms?

5 A. They were referred to us.

6 Q. Who referred them to you?

7 A. I can't remember that.

8 Q. What did this person say when they
9 referred Strategic Capitol Consulting to you?

10 A. I don't remember what they said. I
11 don't remember who it was.

12 Q. So you don't know why you originally
13 hired Strategic Capitol Consulting five years
14 ago?

15 MR. CRAIG: Object to form,
16 misstates testimony. You can answer.

17 A. I don't remember.

18 Q. (BY MR. POTTS) Why did you hire Palm
19 Consulting?

20 A. I don't remember that.

21 Q. Was there another recommendation that
22 led you to hire Palm Consulting?

23 A. I would assume so, but I can't remember.

24 Q. You don't know what anyone said in that
25 recommendation that made you choose to hire Palm

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1 Consulting?

2 A. No, I don't remember.

3 Q. What types of lobbying efforts does Palm
4 Consulting conduct on behalf of Torch?

5 A. I don't know.

6 Q. Does Palm Consulting meet with
7 legislators on behalf of Torch?

8 A. I'm not sure. I don't know.

9 Q. Does Palm Consulting meet with members
10 of the Executive Department within Missouri on
11 behalf of Torch?

12 A. I don't know.

13 Q. Does Palm Consulting advocate for
14 changes in legislation on behalf of Torch?

15 A. I don't know.

16 Q. Does Palm Consulting advocate for
17 changes in regulations on behalf of Torch?

18 A. I don't know.

19 Q. Does Strategic Capitol Consulting
20 advocate for changes in regulations on behalf of
21 Torch?

22 A. I don't know.

23 Q. Does Strategic Capitol Consulting
24 provide Torch with any reports of how they are
25 earning their monthly fee?

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1 MR. CRAIG: Object to form.

2 A. I don't know.

3 Q. (BY MR. POTTS) Does Palm Consulting
4 provide Torch with reports on how they are
5 earning their monthly fee?

6 MR. CRAIG: Object to form.

7 A. I don't know.

8 Q. (BY MR. POTTS) Why did you originally
9 hire Atlas as a lobbyist?

10 A. I don't remember. I would assume it was
11 a recommendation.

12 Q. And what does that recommendation say
13 about Atlas?

14 MR. CRAIG: Object to form.

15 A. I don't remember.

16 Q. (BY MR. POTTS) Do you remember who
17 provided the recommendation for Atlas?

18 A. I do not.

19 Q. Do you remember who provided the
20 recommendation for Palm Consulting?

21 A. I do not.

22 Q. What types of lobbying efforts does
23 Atlas conduct on behalf of Torch?

24 A. I don't know.

25 Q. Does Atlas advocate for changes in

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1 legislation on behalf of Torch?

2 A. I don't know.

3 Q. Does Atlas advocate for changes in
4 regulations on behalf of Torch?

5 A. I don't know.

6 Q. Does Atlas meet with legislators on
7 behalf of Torch?

8 A. I don't know.

9 Q. Does Atlas have meetings with members of
10 the Executive Department on behalf of Torch?

11 A. I don't know.

12 Q. Do any of these lobbying firms do any
13 work outside of Jefferson City on behalf of
14 Torch?

15 A. I don't know that.

16 Q. Does Atlas provide Torch with any
17 reports of how it's earning its monthly fee?

18 A. I don't know.

19 Q. Have you seen any results from any of
20 these three firms' lobbying efforts over the past
21 five years?

22 MR. CRAIG: Object to form.

23 A. I don't know.

24 Q. (BY MR. POTTS) What type of change are
25 you wanting these lobbying firms to make in

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1 Jefferson City?

2 MR. CRAIG: Object to form.

3 A. I don't know.

4 Q. (BY MR. POTTS) Do you know why you're
5 paying these lobbying firms a monthly fee?

6 A. For consulting.

7 Q. And when you say consulting, what type
8 of consulting are they providing to you?

9 A. I don't know.

10 Q. And I apologize, I actually have to jump
11 off really quickly. I hate to do this after 15
12 minutes. I have to call someone back. Can we
13 please jump off the record?

14 MR. CRAIG: Yeah, that's fine.

15 THE VIDEOGRAPHER: The time is
16 approximately 4:02 p.m. We are going off the
17 video record.

18 (Brief recess taken.)

19 THE VIDEOGRAPHER: The time is
20 approximately 4:13 p.m. We are back on the video
21 record. Go ahead.

22 Q. (BY MR. POTTS) All right,
23 Mr. Miltenberger, we are getting close to the
24 end. I'm sorry, I'm closing my door because
25 there was some background noise there.

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1 (Exhibit 26 was marked by the
2 reporter for identification.)

3 Q. (BY MR. POTTS) All right. By my count
4 I think we are up to Exhibit 26, so I'm going to
5 go ahead and mark this as Exhibit 26 and share my
6 screen right now. Are you able to see that,
7 Mr. Miltenberger?

8 A. Yes, yep, I see it.

9 Q. And it's a document with "Torch
10 Electronics" at the top, and you'll see there's
11 an exhibit sticker labeled STM3 and dated
12 12/15/23 at the top right corner.

13 A. Yes, I see it.

14 Q. All right. Do you recognize this
15 document?

16 A. I have seen it before, yes.

17 Q. Do you remember being asked about this
18 document at your prior deposition in December?

19 A. I remember seeing it there, yes.

20 Q. Did this text appear on Torch's website
21 as of early September of 2022?

22 A. I don't know that for sure.

23 Q. Who was the author of this text on this
24 document?

25 A. I don't know.

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1 Q. Since your deposition in December have
2 you taken any action to determine who wrote this
3 text?

4 A. I have not.

5 (Exhibit 27 was marked by the
6 reporter for identification.)

7 Q. (BY MR. POTTS) All right. I'm going to
8 take that down. Next I'm going to put up what's
9 been marked as Exhibit 27 and share my screen.
10 Are you able to see that, Mr. Miltenberger?

11 A. Yes, I see it.

12 Q. Do you recognize this document?

13 A. I remember seeing it before, yes.

14 Q. By that, do you remember being asked
15 about this document at the prior deposition?

16 A. Yes, I believe I saw it there.

17 Q. Did this text appear on Torch's website
18 as of late September of 2022?

19 A. I don't remember that.

20 Q. Who was the author of the text on this
21 document?

22 A. I don't remember that either.

23 Q. Have you done anything since the prior
24 deposition to identify who wrote this text?

25 A. No.

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1 Q. And the contents of this Exhibit 27 are
2 different than Exhibit 26, correct?

3 A. It is different, yes.

4 Q. Do you know why the different, why the
5 change was made to the text?

6 A. I don't know. I don't remember why.

7 Q. I can take that down. And have you done
8 any sort of follow-up to determine why this
9 change was made on Torch's website?

10 A. No.

11 Q. How frequently has Torch used What's App
12 in the course of its business?

13 A. Not.

14 MR. CRAIG: Object to form.

15 A. Not really frequently at all.

16 Q. (BY MR. POTTS) What's the context in
17 which Torch has used What's App in the course of
18 its business?

19 A. Typically what we use What's App, with
20 locations, sharing videos. What's App's good
21 with sharing videos of break-ins, people trying
22 to damage the games . So different video footage
23 is easier to share on What's App, so that's
24 really what we use it for.

25 Q. Are there any other contexts in which

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1 you can respond without divulging attorney/client
2 privileged information, you may do so.

3 A. I can't answer that.

4 Q. (BY MR. POTTS) I'm sorry, you said you
5 cannot answer that?

6 A. I cannot.

7 Q. Have you ever played any of Torch's
8 games, Mr. Miltenberger?

9 A. Not that I can remember.

10 Q. So in the however many years that you
11 have been running this company, you have never
12 sat down and played one of the games?

13 A. Not that I can remember.

14 Q. The next sentence says, "Every outcome
15 can be viewed from a pre-determined finite pool
16 of events." Do you see that?

17 A. Yes, I see it.

18 Q. Is that statement accurate?

19 MR. CRAIG: Object to the form of
20 the question, calls for expert testimony. To the
21 extent you can answer without divulging
22 attorney/client privileged information, you may
23 do so.

24 A. I cannot answer that.

25 Q. (BY MR. POTTS) Are you saying you can't